

This corrects the language of D.Kan. Rule 83.7 contained in the 2004 publication of the Rules of Practice and Procedure for the District and Bankruptcy Court of the United States District Court for the District of Kansas.

RULE 83.7

REVIEW OF ORDERS OF ADMINISTRATIVE AGENCIES, BOARDS, COMMISSIONS AND OFFICERS (INCLUDING SOCIAL SECURITY APPEALS)

(a) Review or Enforcement of an Agency Order--How Obtained.

(1) Petition for review of agency order. Review of an order of an administrative agency, board, commission, or officer must be obtained by filing a pleading with the clerk of the court, within the time prescribed by law, and in the form indicated by the applicable statute. (As used in this rule, the term "agency" includes any federal agency, board, commission, or officer--including the Commissioner of Social Security under Title 42 of the United States Code.) The caption of the initial pleading must name each party seeking review. The pleading also must name the defendant or respondent designated in the applicable statute, and identify the order or part thereof to be reviewed. The pleading shall also contain a citation of the statute by which jurisdiction is claimed. If two or more persons are entitled to seek judicial review of the same order and their interests are such as to make joinder proper, they may file a joint pleading.

(2) Application for enforcement of order; cross-application for enforcement. An application for enforcement of an order of an agency shall contain a concise statement of the proceedings in which the order was entered, the facts upon which jurisdiction and venue are based, and the relief prayed. In cases seeking review of an agency order, which the court has jurisdiction to enforce, the agency may file a cross-application for enforcement.

(3) Service of process. Service of process shall be in the manner provided by Fed.R.Civ.P. 4, unless a different manner of service is prescribed by an applicable statute.

(b) The record on review or enforcement.

(1) Composition of the record. The order sought to be reviewed or enforced, the findings or report on which it is based, and the pleadings, evidence and proceedings before the agency shall constitute the record on review in proceedings to review or enforce the order of an agency, unless otherwise provided by the applicable statute.

(2) Omissions from or misstatements in the record. If anything material to any party is omitted from the record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

(c) **Filing of the record.** In review proceedings, the agency shall file the record with the clerk of this court when it files its answer unless a different time is provided by the statute authorizing review. In enforcement proceedings the record need not be filed unless the respondent has filed an answer contesting enforcement of the order. If the record is required, the court shall fix the time for its filing. The record shall be filed conventionally, not electronically.

(d) **Filing and service of briefs.** The party seeking review shall serve and file a brief conforming to the requirements of D. Kan. Rule 7.6 within 45 days after the date on which the record

is filed. The responding party shall serve and file a brief within 30 days after service of the brief of the party seeking review. The party seeking review may serve and file a reply brief within 14 days after service of the brief of the respondent. The time for filing and serving briefs may be extended or shortened by order of the court. The case shall be submitted when all briefs have been filed. The decision of the court will be rendered upon the briefs and the record, without oral argument, unless otherwise directed by the court.

(e) Applicability of other rules. The parties to any proceedings governed by this rule shall give the same notice of the filing of pleadings, records and other documents as is required by Fed. R. Civ. P. 5. All other provisions of the Federal Rules of Civil Procedure and the rules of this court shall apply to such proceedings to the extent to which they are applicable. The provisions of this rule shall control over the provisions of any local rule in conflict.

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As amended 10/22/98; 3/04.

Renumbered 6/95. Formerly Rule 503.